

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

DAWN D'AGUILAR,

Debtor.

TF-0014/HS
September 12, 2024
10:00 AM

Case No. 24-10685-PB

Hon. PHILIP BENTLEY

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Philip Bentley, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, VIA ZOOM on the 12th day of September, 2024 at 10:00 AM, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. §1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that any hearing on the within application will be held by telephone or Zoom video conference only. No in-person hearing will be held in the Courthouse. Participants are required to register their appearance at <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl> 48 hours before the scheduled hearing.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Thomas C. Frost, Esq., no later than seven (7) days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: White Plains, New York
August 20, 2024

/s/ Thomas C. Frost

THOMAS C. FROST, CHAPTER 13 TRUSTEE
399 KNOLLWOOD ROAD, STE 102
WHITE PLAINS, NY 10603
(914)328-6333

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

DAWN D'AGUILAR,

Debtor.

TF-0014/HS
September 12, 2024
10:00 AM

Case No: 24-10685-PB

Hon. PHILIP BENTLEY

APPLICATION

TO THE HONORABLE PHILIP BENTLEY, U.S. BANKRUPTCY JUDGE:

THOMAS C. FROST, ESQ., Standing Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on April 22, 2024 and, thereafter, THOMAS C. FROST was duly appointed and qualified as Trustee.
2. The Debtor's proposed Chapter 13 plan must be amended to address all secured and priority creditors consistent with the amounts listed in the filed claims.
3. The Debtor must amend the Plan to increase plan payments to at least \$50.00 per month pursuant to 11 U.S.C. §330(c). The Plan filed on June 6, 2024 does not provide for any plan payments under Part 2. (ECF No. 14).
4. The Debtor's budget, Schedules I and J, indicates a negative cash flow which clearly demonstrates that the Debtor will not be able to make any Chapter 13 plan payments as required by 11 U.S.C. §1325(a)(6).
5. The Debtor has failed to comply with 11 U.S.C. §521(a)(1) and Bankruptcy Rule 1007(b) in that the Debtor's complete and accurate schedules of assets and liabilities pursuant to 11 U.S.C. §521(a)(1)(B)(i) have not been filed. While the Debtor has filed Schedules, they are substantively deficient and largely incomplete.
6. Further, the Debtor's filed official Form B22C (CMI), Statement of Monthly Income and Disposable Income pursuant to 11 U.S.C. §521(a)(1)(B)(v) and statement of Financial Affairs pursuant to 11 U.S.C. §521(a)(1)(B)(iii) are significantly incomplete.
7. Furthermore, the Debtor has failed to:
 - a. appear and be examined at the Section 341 Meeting of Creditors as required by 11 U.S.C. §343;
 - b. commence making Chapter 13 plan payments to the Trustee, as required by 11 U.S.C. §1326(a)(1); and
 - c. provide the Trustee with copies of Social Security/Disability Income statements.

8. The deficiencies as stated above impede the Trustee's ability to administer this case and, therefore, is a default that is prejudicial to the rights of the creditors of the Debtor pursuant to 11 U.S.C. §1307(c)(1).
9. The foregoing constitutes cause to dismiss this Chapter 13 case within the meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Dated: White Plains, New York
August 20, 2024

/s/ *Thomas C. Frost*
Thomas C. Frost, Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

DAWN D'AGUILAR,

Debtor.

Case No: 24-10685-PB

**CERTIFICATE OF SERVICE
BY MAIL**

This is to certify that I, Nancy Alexander, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

DAWN D'AGUILAR
P.O. BOX 1351
BRONX, NY 10466

PRO SE DEBTOR

EHRET A. VAN HORN, ESQ.
GROSS POLOWY LLC
1775 WEHRLE DRIVE
SUITE 100
WILLIAMSVILLE, NY 14221

LINDA ST. PIERRE, ESQ.
MCCALLA RAYMER LEIBERT PIERCE, LLC
50 WESTON STREET
HARTFORD, CT 06120

This August 20, 2024

/s/Nancy Alexander
Nancy Alexander, Paralegal
Office of the Standing Chapter 13 Trustee
Thomas C. Frost, Esq.
399 Knollwood Road, Suite 102
White Plains, New York 10603
(914) 328-6333

CASE NO: 24-10685-PB
Hon. PHILIP BENTLEY

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

DAWN D'AGUILAR,

Debtor.

**NOTICE OF MOTION, APPLICATION
and
CERTIFICATE OF SERVICE**

**THOMAS C. FROST
STANDING CHAPTER 13 TRUSTEE
399 KNOLLWOOD ROAD, SUITE 102
WHITE PLAINS, NEW YORK 10603
(914) 328-6333**
